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HB 324 - Low THC Oil

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CRIMES AND OFFENSES

Offenses Against Public Health and Morals: Amend Chapter 12 of Title 16 of the Official Code of Georgia Annotated, Relating to Offenses Against Public Health and Morals, so as to Provide for the Production, Manufacturing, and Dispensing of Low THC Oil in this State; Provide for an Exception to Possession of Certain Quantities of Low THC Oil; Provide for Definitions; Require a License to Produce, Grow, Manufacture, or Dispense Low THC Oil in this State; Provide for the Creation of the Georgia Access to Medical Cannabis Commission; Provide for its Membership, Powers, and Duties; Provide for the Issuance of Designated University Licenses and Class 1 and Class 2 Production Licenses; Authorize the University System of Georgia to Obtain Cannabis Through the National Institute on Drug Abuse or from any Available Legal Source; Provide for the Dispensing of Low THC Oil by Pharmacies; Provide for Dispensing Licenses; Provide for Seed-to-Sale Tracking Systems; Provide for Retrospective Study; Provide for Enforcement by the Georgia Bureau of Investigation; Provide for Facility Inspections and Product Sample Testing; Prohibit Certain Convicted Felons from Working as Employees for Licensees; Provide for Confidentiality of Records; Provide for Transfer of Certain Licenses; Provide for Revocation of Licenses; Prohibit Ownership by Certain Physicians in Low THC Oil Manufacturers or Distributors; Provide for Violations and Penalties; Provide for Immunity; Provide for Reimbursement of Legal Expenses for State Employees; Provide for Contracts; Prohibit Ingesting Low THC Oil Through Vaping; Prohibit Regulation by the Department of Agriculture; Amend Chapter 11 of Title 2 of the Official Code of Georgia Annotated, Relating to Seeds and Plants Generally, so as to Provide for an Exception; Amend Code Section 31-2A-18 of the Official Code of Georgia Annotated, Relating to Establishment of the Low THC Oil Patient Registry, so as to Require a Physician to Review Information in the Prescription Drug Monitoring Program Data Base; Provide for Research to Determine the Efficacy of Low THC Oil for Treatment of Conditions; Provide for Related Matters; Provide for a Short

***Title; Provide for Legislative Findings; Repeal Conflicting Laws;
and for Other Purposes***

CODE SECTIONS:	O.C.G.A. §§ 16-12-191 (amended), -200, -201, -202, -203, -204, -205, -206, -207, -210-, -211, -212, -213, -214, -215, -216, -217, -218, -219, -220, -221, -222, -223, -224, -225, -226; -230 (new), -231, -232, -233, -234, -235, -236; 2-11-36; 31-2A-18 (amended)
BILL NUMBER:	HB 324
ACT NUMBER:	27
GEORGIA LAWS:	2019 Ga. Laws 43
SUMMARY:	The Act allows for the production, manufacturing, and dispensing of low THC oil in the State of Georgia, in accordance with a licensing regime that will be regulated by a twelve-member board. Additionally, the Act provides for a tracking system of production, purchase, and patient registration information, as well as licensing provisions for the University System of Georgia and the State Board of Pharmacy.
EFFECTIVE DATE:	July 1, 2019

History

In 2009, Haleigh Cox was born to two loving and excited parents in Georgia.¹ Born seemingly bright and healthy, Haleigh's development was not on par with children of the same age, and she was ultimately diagnosed with intractable epilepsy and cerebral palsy.² Haleigh's parents were desperate for help with managing her

1. *Meet Haleigh*, HALEIGH'S HOPE, <http://haleighshope.co/meet-haleigh/> [<https://perma.cc/C6CQ-CF34>] (last visited Sept. 13, 2019).

2. *Id.*

seizures, which, without medication, could occur more than two hundred times a day.³ They turned to medicinal marijuana.⁴ Marijuana, however, was not accessible in any form in Georgia, even for medicinal purposes. So, Haleigh's parents moved to Colorado.⁵ After moving to Colorado to access legalized cannabis, they yearned to move back to their home State of Georgia, so Haleigh's parents engaged Representative Allen Peake (R-141st) to help get medicinal marijuana legalized in Georgia.⁶

Representative Peake unsuccessfully tried to pass legislation for medical marijuana in 2014.⁷ In 2015, however, Representative Peake's efforts were met with overwhelming support.⁸ With Representative Peake's assistance, the Cox family received the good news they had been waiting for; in 2015, the Georgia General Assembly passed a law that permitted medical patients to possess and use low tetrahydrocannabinol (THC) oil of twenty fluid ounces or less.⁹ This act was penned "Haleigh's Hope Act."¹⁰ Families like the Coxes returned back to their home State of Georgia for the first time in months or even years.¹¹ Individuals who hoped to obtain medicinal marijuana through this law needed to qualify under certain medical conditions.¹² In fact, the bill covered eight particular medical conditions: cancer, amyotrophic lateral sclerosis (ALS), seizure disorders, multiple sclerosis, Crohn's disease, mitochondrial disease, Parkinson's disease, and sickle cell disease.¹³ Individuals who were not certified by a physician to have one of the foregoing conditions were not eligible to obtain cannabis under Haleigh's Hope Act.¹⁴ The

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. Telephone Interview with Jacob Eassa, Lobbyist, Capitol Affairs (June 20, 2019) (on file with the Georgia State University Law Review) [hereinafter Eassa Interview].

8. *Meet Haleigh*, *supra* note 1.

9. O.C.G.A. § 16-12-191 (2015).

10. *Id.*

11. Lauren Sennet, *Girl's Seizures Spur Medical Marijuana Legislation in Georgia*, CNN (Apr. 16, 2015, 12:12 PM), <https://edition.cnn.com/2015/04/16/us/georgia-medical-marijuana-bill-signing-haleigh-cox/> [https://perma.cc/RRZ4-SZNH].

12. *Id.*

13. *About HB 1*, GA.'S HOPE, <https://georgiashope.com/about-hb1/> [https://perma.cc/499T-U7D4] (last visited Sept. 13, 2019).

14. *Id.*

delivery method of medicinal marijuana was also limited to oil; smoking of any kind was not permitted.¹⁵ In addition, recreational marijuana use was also strictly prohibited.¹⁶

Haleigh's Hope Act created "an infrastructure, registration process and research program for the drug."¹⁷ On June 16, 2015, the patient registry became available to the public.¹⁸ The Department of Public Health oversaw this patient registry, and patients and physicians who wished to register were able to do so on the registry website.¹⁹ By November 1, 2016, over 1,100 patients were registered on the website as suffering from one of the eight medical conditions covered by Haleigh's Hope Act.²⁰ In 2017, various groups took active measures to increase the types of medical conditions covered under Haleigh's Hope Act.²¹ In response, Representative Peake introduced House Bill (HB) 65 to the House in 2017.²² This bill added new medical conditions that would be covered under the 2015 law, like autism spectrum disorder, HIV/AIDS, Alzheimer's disease, post-traumatic stress disorder, Tourette's syndrome, and intractable pain.²³

Although these aforementioned bills took active steps toward gaining a permissive means of using medicinal THC oil, patients had practically no legal way to gain access to the THC oil because it was illegal to "grow, buy, sell or transport the drug" in Georgia.²⁴ Individuals who wanted access to this drug for medicinal purposes had to cross state lines or purchase marijuana illegally and then condense it down to oil.²⁵ As of April 1, 2019, the number of people registered for medical marijuana oil was over 8,400, and these people

15. *Id.*

16. *Id.*

17. Sennet, *supra* note 11.

18. *About HB 1*, *supra* note 13.

19. *Id.*

20. *Id.*

21. *2017 Efforts*, GA.'s HOPE, <https://georgiashope.com/2017-efforts/> [<https://perma.cc/4Q5C-U5Q3>] (last visited Sept. 13, 2019).

22. HB 65, as introduced, 2017 Ga. Gen. Assemb.

23. *2017 Efforts*, *supra* note 21.

24. O.C.G.A. § 16-12-191 (2015); Mark Niese, *Medical Marijuana Dispensaries Bill Passes Georgia House*, ATLANTA J.-CONST. (Mar. 5, 2019), <https://www.ajc.com/news/state-regional-govt-politics/medical-marijuana-dispensaries-bill-passes-georgia-house/TiRIqJOF7ogWvhe8sK0JaO/> [<https://perma.cc/J726-JEGZ>] [hereinafter *Medical Marijuana Dispensaries*].

25. Eassa Interview, *supra* note 7.

had no legal way to obtain the marijuana.²⁶ During the 2019 legislative session, Representative Micah Gravley (R-67th) introduced HB 324, which was designed to provide patients a meaningful way to acquire low THC oil for medicinal purposes.²⁷ Four years in the making, this bill received bipartisan support, and both Republicans and Democrats reached across the aisle to get it passed.²⁸

Bill Tracking of HB 324

Consideration and Passage by the House

Representatives Micah Gravley (R-67th), Mark Newton (R-123rd), Alan Powell (R-32nd), Calvin Smyre (D-135th), David Clark (R-98th), and Scot Turner (R-21st) sponsored HB 324 and were instrumental to its passage.²⁹ Representative Gravley introduced the bill on February 14, 2019.³⁰ The House first read HB 324 on February 15, 2019.³¹ The House read the bill again on February 19, 2019.³² Speaker of the House David Ralston (R-7th) assigned HB 324 to the House Committee on Regulated Industries (House Committee).³³

On March 1, the House Committee favorably reported the bill by substitute.³⁴ This substitute added a provision to the bill that prohibited “ingesting low THC oil through vaping.”³⁵ In addition, the

26. Mark Niese & Maya T. Prabhu, *5 Bills to Watch on Last Day of the Georgia Legislature's Session*, ATLANTA J.-CONST. (Apr. 1, 2019), <https://www.ajc.com/news/state—regional-govt—politics/bills-watch-last-day-the-georgia-legislature-session/TZjBVxfDKVXM6Oj88iO68N/> [https://perma.cc/4LS3-YXCZ].

27. Jim Galloway, Greg Bluestein, & Tamar Hallerman, *The Jolt: Why a Conservative Split on Medical Pot Could Have MARTA Implications*, ATLANTA J.-CONST. (Feb. 15, 2019), <https://www.ajc.com/blog/politics/the-jolt-why-conservative-split-medical-pot-could-have-marta-implications/th2D0Pie5dDVQFb9x7XTeN/> [https://perma.cc/C4AZ-2234].

28. Mark Niese, *Georgia Bill Seeks In-State Cultivation, Sale of Medical Marijuana*, ATLANTA J.-CONST. (Mar. 4, 2019), <https://www.ajc.com/news/state—regional-govt—politics/georgia-bill-seeks-state-cultivation-sale-medical-marijuana/mwOAJlw8vi2JGynk44naIK/> [https://perma.cc/2PRL-KHJ3].

29. HB 324, as introduced, 2019 Ga. Gen. Assemb.

30. State of Georgia Final Composite Status Sheet, HB 324, May 15, 2019.

31. *Id.*

32. *Id.*

33. *Id.*

34. State of Georgia Final Composite Status Sheet, HB 324, May 15, 2019.

35. HB 324 (HCS), p. 1, ll. 9–10, 2019 Ga. Gen. Assemb.

House Committee substitute also modified the members to be appointed to the Low THC Oil License Oversight Board (Board).³⁶ The original bill designated the director of the Georgia Bureau of Investigations and the Attorney General as two of the eleven Board members.³⁷ The House Committee substitute, however, removed these members and instead provided that the President of the Senate and the Speaker of the House could each designate a total of three members, rather than only two each under the previous version of the bill.³⁸

Furthermore, the House Committee substitute increased the radius restrictions required for a licensee to operate its THC manufacturing, distribution, cultivation, etc.³⁹ The House Committee substitute prohibited licensees from operating within 3,000 feet of a school or church, rather than only a 1,000 foot radius, which was required under the previous version.⁴⁰ Additionally, the House Committee substitute required any licensee to identify itself as a licensee to recipients of any campaign contributions made by the licensee.⁴¹ The final modification made by the House Committee substitute concerned physicians reporting to the Board.⁴² Under the House Committee substitute, the bill indicated that the Board is to use such physicians' reports for research purposes in determining the efficacy of the use of low THC oil as a treatment for certain medical conditions.⁴³

On March 4, 2019, the bill was withdrawn from the House Committee and then recommitted.⁴⁴ On March 5, 2019, the House read HB 324 for a third time.⁴⁵ This version of the bill increased the number of Board members from eleven to twelve by adding the director of the Georgia Drugs and Narcotics Agency as a member of

36. HB 324 (HCS), 2019 Ga. Gen. Assemb.

37. HB 324, as introduced, § 4, p. 6, ll. 192–93, 2019 Ga. Gen. Assemb.

38. HB 324 (HCS), § 4, pp. 6–7, ll. 199–204, 2019 Ga. Gen. Assemb.

39. *Id.* p. 16, ll. 542–47.

40. *Id.*; HB 324, as introduced, § 4, p. 16, ll. 536–41, 2019 Ga. Gen. Assemb.

41. HB 324 (HCS), § 4, p. 19, ll. 653–59, 2019 Ga. Gen. Assemb.

42. *Id.* p. 21, ll. 698–700, 2019 Ga. Gen. Assemb.

43. *Id.*

44. State of Georgia Final Composite Status Sheet, HB 324, May 15, 2019.

45. *Id.*

the Board.⁴⁶ On that same day, HB 324 passed the House with overwhelming support.⁴⁷

Consideration and Passage by the Senate

Upon passage in the House of Representatives, HB 324 faced many obstacles to its passage in the Senate. Senator Matt Brass (R-28th), vice chairperson of the Senate Regulated Industries and Utilities Committee, sponsored the bill in the Senate.⁴⁸ The Senate first read the bill and referred it to the Regulated Industries and Utilities Committee on March 7, 2019.⁴⁹ On March 28, 2019, the Senate Committee favorably reported the bill by substitute, and then the Senate read the bill for the second time.⁵⁰ The next day, March 29, 2019, the Senate conducted its third reading of the bill, passing and adopting the bill by substitute by a vote of 44 to 8.⁵¹

The Senate Committee's substitute, among several other changes, placed emphasis on the university system's role in the production of medical cannabis.⁵² Under this substitute, designated universities had the "right of first refusal" to the production licenses, and would be permitted to conduct research on marijuana for therapeutic use.⁵³ Another key change in the Senate Committee substitute reduced the number of both Class One and Class Two licenses that may be issued from five down to one.⁵⁴ The substitute also provided that the State Board of Pharmacy shall develop specialty dispensing licenses in order for pharmacies to dispense low THC oil—licenses that are separate and distinct from the safe access retail license.⁵⁵

46. HB 324 (AM 33 1866), 2019 Ga. Gen. Assemb.

47. Georgia House Voting Record, HB 324, #154 (Mar. 5, 2019) (passing the substitute by a vote of 123 to 40).

48. Georgia General Assembly, HB 324, Bill Tracking, <http://www.legis.ga.gov/Legislation/en-US/display/20192020/HB/324>; *Senate Regulated Industries and Affairs*, GA. ST. SENATE, <http://www.senate.ga.gov/committees/en-US/Committee.aspx?Committee=141&Session=27> [<https://perma.cc/8MBU-T9JD>] (last visited June 23, 2019).

49. State of Georgia Final Composite Status Sheet, HB 324, May 15, 2019.

50. *Id.*

51. *Id.*; Georgia Senate Voting Record, HB 324, #318 (Mar. 29, 2019).

52. HB 324 (SCS), § 4, p. 11, ll. 354–66, 2019 Ga. Gen. Assemb.; Eassa Interview, *supra* note 7.

53. HB 324 (SCS), § 4, p. 11, l. 274, 2019 Ga. Gen. Assemb.

54. Telephone Interview with Sen. Brass (R-28th) (May 31, 2019) (on file with the Georgia State University Law Review) [hereinafter Brass Interview]; Eassa Interview, *supra* note 7.

55. HB 324 (SCS), § 4, p. 11, ll. 368–76, 2019 Ga. Gen. Assemb.

Additionally, the Senate Committee substitute reduced the twelve-member department of the Low THC Oil License Oversight Board to a commission comprised of only five members—the Georgia Access to Medical Cannabis Commission.⁵⁶ This Commission would be comprised of three members appointed by the Governor, one member appointed by the Lieutenant Governor, and one member appointed by the Speaker of the House of Representatives, eliminating the remaining seven positions.⁵⁷ In addition to changing the name of the commission, its composition, and its responsibilities, the substitute clarified that the commission would be placed under the Department of Public Health for administrative purposes only.⁵⁸

The Senate stood its ground against the House's opposition to the new amendments in the substitute.⁵⁹ After creating the Conference Committee Report on April 2, 2019, the Senate adopted it by a vote of 34 to 20.⁶⁰

The Act

The Act amends Chapter 12 of Title 16, relating to public health and morals. Georgia's Hope Act functions as a vital expansion of Haleigh's Hope Act, creating an infrastructure under which Georgia patients can safely and legally access the low THC oil that they were already allowed to possess.⁶¹ The Act allows for the production, manufacturing, and dispensing of low THC oil in Georgia and expands the list of medical conditions low THC oil can be used to treat.⁶² To oversee the production and distribution of low THC oil, the Act creates the Georgia Access to Medical Cannabis Commission and additionally provides that the General Assembly shall establish a Medical Cannabis Commission Oversight Committee.⁶³

56. *Id.* p. 6, ll. 199–202.

57. *Id.* pp. 6–7, ll. 201–07.

58. *Id.* p. 6, ll. 199–201.

59. State of Georgia Final Composite Status Sheet, HB 324, May 15, 2019.

60. *Id.*; Georgia Senate Voting Record, HB 324, #429 (Apr. 2, 2019); HB 324 (SCCR), 2019 Ga. Gen. Assemb.

61. O.C.G.A. § 16-12-191 (2018 & Supp. 2019); O.C.G.A. § 16-12-191 (2015); *Medical Marijuana Dispensaries*, *supra* note 24.

62. O.C.G.A. § 31-2A-18 (2018 & Supp. 2019).

63. O.C.G.A. § 16-12-202, -207 (Supp. 2019).

Importantly, the Medical Cannabis Commission Oversight Committee has the authority to issue two tiers of licenses—Class 1 and Class 2—either of which must be obtained by low THC producers and manufacturers.⁶⁴ The Class 1 licensees are permitted to grow cannabis in a 100,000-square-foot indoor space, and the Commission may only issue two of these licenses annually.⁶⁵ The Commission may also issue four Class 2 licenses annually, which are for smaller licensees with production places of 50,000 square feet.⁶⁶ Both classes bear many similarities: the licensees must be Georgia corporations or entities and must maintain strict chain of custody records and security protocols.⁶⁷ Additionally, Class 2 licensees must have \$1.25 million available in cash reserves for operations investments, while the Class 1 licensees must have \$2 million in cash reserves.⁶⁸

Further, the Act establishes a tracking system that tracks marijuana and low THC oil “from seed to sale.”⁶⁹ More specifically, the system links all plants, products, and purchases to unique identification numbers, and follows the items through the entire chain of custody.⁷⁰ The reports gained through the tracking process allow for analysis of inventory discrepancies, adverse patient responses, and all sales and refunds.⁷¹

Another key section of the Act emphasizes the role of the university system.⁷² Under Code section 16-12-204, universities may obtain licenses either independently or in conjunction with private facilities to produce low THC oil.⁷³ In addition to producing the oil, universities may conduct research on marijuana for therapeutic and medical purposes, provided they report their findings to the Senate Health and Human Services Committee and the House Committee on Health and Human Services.⁷⁴

64. *Id.* § 16-12-211 to -212.

65. *Id.* § 16-12-211.

66. *Id.* § 16-12-212.

67. *Id.* § 16-12-211 to -212.

68. *Id.*

69. O.C.G.A. § 16-12-200 (Supp. 2019).

70. *Id.* § 16-12-213.

71. *Id.*

72. *Id.* § 16-12-204 to -205.

73. *Id.* § 16-12-204.

74. *Id.*

*Analysis**Providing Substance to Haleigh's Hope Act*

Under Haleigh's Hope Act, patients had no means to purchase marijuana, so they were forced to "take a huge risk and break federal law . . . by purchasing [marijuana] on the streets to get low THC oil" for medical relief.⁷⁵ HB 324 sought to give substance to the original medical marijuana bill by giving patients, who were legally given access to medicinal marijuana, a physical means to access low THC oil and setting up a more comprehensive system that fills in many of the gaps that existed in Haleigh's Hope Act.⁷⁶

Law Enforcement Opposition to HB 324

Opposition groups in Georgia feared that HB 324 would lead to countless recreational users of marijuana.⁷⁷ One such organization was the Georgia Sheriffs' Association, a group that believed HB 324 was too expansive and would be a gateway that led to unsafe outcomes and would impede Georgia sheriffs' abilities to protect Georgia citizens.⁷⁸ Under the current statute, oversight of medicinal marijuana production and sale is led by the Georgia Access to Medical Cannabis Commission.⁷⁹ The Georgia Sheriffs' Association fears that this Medical Cannabis Commission does not provide adequate oversight to the operations involved under the new legislation because the Act raises more issues, rather than solutions, and fails to address a means to handle the sheriffs' concerns.⁸⁰

75. Eassa Interview, *supra* note 7.

76. Brass Interview, *supra* note 54.

77. Jim Galloway, *This Time, Science Weighs in on a Capitol Debate Over Medicinal Marijuana*, ATLANTA J.-CONST. (Mar. 12, 2019), <https://www.ajc.com/blog/politics/this-time-science-weighs-capitol-debate-over-medicinal-marijuana/VKTuXX2ldhHCqivibaZQYM/> [https://perma.cc/ABM7-WHKZ].

78. Meghan Mangrum, *Seven Georgia Sheriffs Speak Out Against Bill that Would Allow Production, Sale of Medical Cannabis Oil*, CHATTANOOGA TIMES FREE PRESS (Mar. 4, 2019), <https://www.timesfreepress.com/news/local/story/2019/mar/04/georgia-sheriffs-against-medical-cannabis/489908/> [https://perma.cc/X5B7-7J58].

79. O.C.G.A. § 16-12-203 (Supp. 2019).

80. Mangrum, *supra* note 78.

Federalism Concerns

As states around the country slowly legalize marijuana or medical marijuana, federalism concerns are at play between the conflicting federal and state laws.⁸¹ Federal law currently prohibits the use of marijuana; whereas, Georgia law permits the use of medicinal marijuana.⁸² One particular component of the bill raises such federalism issues. The Act currently allows the Georgia university system to play a role in the production of medical cannabis.⁸³ Designated universities have the right of first refusal to the production licenses and are granted the right to conduct research regarding marijuana.⁸⁴ Therefore, if the state universities exercise their rights of first refusal, they are potentially exposed to liability by being a player in a system that violates federal law.⁸⁵

Many believe that the federal government is not going to interfere with states' marijuana legalization efforts.⁸⁶ In 2013, the Department of Justice under the Obama administration released a memo called the "Cole Memo," which stated, among other things, that the federal government will not interfere with the states' marijuana scheme so long as the state regulates its private system.⁸⁷ If the state moves beyond mere regulation, the federal government is free to interfere.⁸⁸ Under the Trump administration, Attorney General Jeff Sessions rescinded this memo and said that the federal government will no longer take such a hands-off-approach to states' legalization and regulation of marijuana.⁸⁹ Sessions' memo, however, did not go as far as to direct prosecutions or efforts to shut down state marijuana industries.⁹⁰ In conclusion, under the current presidency, states' freedom from federal interference is not guaranteed, and Georgia

81. Eassa Interview, *supra* note 7.

82. 21 U.S.C. § 812 (1970); O.C.G.A. § 16-12-191 (2018 & Supp. 2019).

83. § 16-12-204 to -205; Eassa Interview, *supra* note 7.

84. § 16-12-204(a).

85. Eassa Interview, *supra* note 7.

86. *Id.*

87. Memorandum from James M. Cole, Deputy Attorney Gen., Dep't of Justice, to all U.S. Attorneys (Aug. 29, 2013) (on file with the Georgia State University Law Review).

88. *Id.*

89. Laura Jarrett, *Sessions Nixes Obama-Era Rules Leaving States Alone That Legalize Pot*, CNN (Jan. 4, 2018), <https://www.cnn.com/2018/01/04/politics/jeff-sessions-cole-memo/index.html> [https://perma.cc/7AHQ-CHV2].

90. *Id.*

could potentially face liability from tying the state university system to the cultivation and regulation of low THC oil.

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